

# **LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY**

## **GOVERNANCE STUDY OF THE NAPA RIVER RECLAMATION DISTRICT NO. 2109**

**APRIL 2006**

### **LAFCO of Napa County**

*Committed to serving the citizens and government agencies of its jurisdiction by encouraging the preservation of agricultural lands and open-space and coordinating the efficient delivery of municipal services.*

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## **INTRODUCTION**

The Local Agency Formation Commission (LAFCO) is a state-mandated agency responsible for administering California Government Code Sections 56000 et. seq., known as the Cortese-Knox-Hertzberg (CKH) Local Government Reorganization Act of 2000. CKH charges LAFCO with the responsibility to encourage the orderly formation and development of local agencies in a manner that discourages urban sprawl, preserves agricultural and open-space lands, and plans for the efficient extension of urban services. This includes reviewing proposals for changes of organization of local governments. Such changes include annexations and detachments to cities and special districts, the formation of new government districts, and the incorporation of cities. LAFCOs are located in all 58 counties in California.

As part of its legislative mandate, California Government Code §56378 authorizes LAFCO to conduct studies on existing government agencies. These studies can range in topic and are generally used by LAFCO to address a governance or service issue identified by the Commission. Examples include studies of special district consolidations, mergers, dissolutions, and formations.

### **Napa River Reclamation District No. 2109**

Pursuant to California Government Code §56378, LAFCO of Napa County has prepared a governance study on the Napa River Reclamation District No. 2109 (NRRD). The study has been prepared in response to a service review determination adopted by the Commission in August 2005. This determination outlined the need to address the existing disconnect between the reclamation powers of NRRD and the preferences of its constituents not to establish or fund public reclamation services in a manner that is consistent with its principle act. The study summarizes existing service and governance provision within NRRD and analyzes available government structure options based on specified criteria.

The underlying purpose of this governance study is to serve as an informational tool for LAFCO, NRRD, and the public. No recommendations are offered as part of the study. However, the information contained in the study may be used to consider future actions as determined by the Commission.

## PREAMBLE

The underlying purpose of this governance study is to serve as an informational tool for LAFCO, NRRD, and the public. It is in this context that the study incorporates into the analysis the precept of liability for NRRD as identified by its legal counsel. The issue of determining liability is not the purview of LAFCO and is only incorporated as part of this study at the request of the NRRD Board.

## BACKGROUND

NRRD provides sewer and limited reclamation services to an unincorporated community in southwest Napa County. NRRD is located along the western shoreline of the Napa River and is comprised of two distinct subdivisions developed in the late 1940s and early 1950s. The subdivisions are separated by an abandoned Southern Pacific Railroad crossing and were initially developed for seasonal uses. However, by the 1960s, the majority of developed lots in both subdivisions had been converted to year-round uses. NRRD currently serves 138 developed single-family residences with an estimated service population of 359.<sup>1</sup>

NRRD was formed in 1974 to maintain and improve an existing levee serving the “Edgerly Island Subdivision.”<sup>2</sup> The subdivision was approved in 1950 and involved the creation of 112 lots, all of which were conjoined with a private and community-wide levee.<sup>3</sup> Following its formation, NRRD began providing levee control for Edgerly Island in a purely advisory capacity – actual maintenance of the levee by reason of ownership remained the responsibility of individual property owners.<sup>4</sup>

In 1984, NRRD began providing sewer service following a special amendment to its principle act. The special amendment was enacted by the California Legislature to allow NRRD to address a public health notice issued by the County of Napa Health Department. The health notice, which resulted in a building moratorium between 1976 and 1984, declared that a number of private septic systems were failing and posed a contamination threat to local groundwater supplies in the Edgerly Island area.<sup>5</sup> Significantly, the special amendment coincided with NRRD’s annexation of the north neighboring “Ingersoll Subdivision.” This subdivision was approved as part of two separate proposals in 1946 and 1949 and involved the creation of 49 lots that were also conjoined with the private and community-wide levee.

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<sup>1</sup> Projection based on the 2005 California Department of Finance population per household estimate (2.6) assigned to Napa County and multiplied by the number of residences in NRRD with active sewer service.

<sup>2</sup> NRRD was formed under the Reclamation District Act, Division 15, California Water Code (Section 50000-53901).

<sup>3</sup> It is believed that the original levee system severing the Edgerly Island area was constructed by salt companies in the early 1900s as part of a network of salt pond operations within the region.

<sup>4</sup> At the time of formation, it had been discussed that easements would be negotiated with property owners to provide NRRD access to the levee. However, upon assuming governance control, the NRRD Board elected not to pursue easements with property owners.

<sup>5</sup> Water service to the Edgerly Island area is provided by two private water companies, the Meyers Water Company and the Milton Road Water Company. Both private water companies draw their water supplies from local wells.

In step with the initiation of sewer service in 1984, NRRD extended its advisory levee control service to include the Ingersoll Subdivision. Advisory services were accomplished through regular inspections of the levee for consistency with structural standards recommended by NRRD. NRRD enforced its standards by issuing notices for repairs and nuisance complaints for non-compliance. However, as part of an action brought against a property owner in the early 2000s, the Napa County Superior Court determined that NRRD did not have the authority to issue a nuisance complaint. Without a means to enforce uniform standards, NRRD suspended its advisory services, which left all oversight with respect to levee control to property owners. The lone reclamation service presently provided by NRRD involves the operation of the pump station on Edgerly Island that it inherited upon its formation from the Napa County Flood Control and Water Conservation District (NCFCWCD).<sup>6</sup>

## DISCUSSION

In preparing the earlier service review, LAFCO staff made a concerted effort to identify the collective service needs and preferences of NRRD constituents. These efforts included issuing several community-wide public comment notices and attending meetings of the NRRD Board during various phases of the service review. Underlying these efforts was the goal of identifying local conditions and circumstances affecting service and governance provision within the community.

Based on the information collected during the service review, LAFCO determined the need for a governance study to evaluate the options and merits of reorganizing NRRD. In making this determination, LAFCO pointed to the existing disconnect between the reclamation authority of NRRD and the preference of its constituents not to establish or fund public reclamation services in a manner consistent with the District's principle act. Implicit in this determination is the question of whether it is appropriate to reorganize NRRD to remove its reclamation authority, and if so, what government structure is best suited to meet the present and future needs of the community?

## ANALYSIS

The focus of this analysis is to identify and consider government structure options for NRRD to better reconcile its powers with the needs of its constituents. The analysis recognizes that NRRD presently provides organized sewer service along with limited reclamation by operating an automated pump station to drain storm and flood waters from the Edgerly Island Subdivision. Criteria used to develop and evaluate government structure options rests on consistency with the following key governance and service factors drawn from the service review:

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<sup>6</sup> Until recently, NRRD also inspected the levee for conformance with its recommended standards as part of the County of Napa building permit process, which is codified as part of Napa County Building Code 15.08.040(L). NRRD has advised LAFCO that it suspended this practice in 2004.

- There is a strong need for organized sewer service within the jurisdictional boundary of NRRD. This need was cited by an earlier review by the County of Napa and has been affirmed by constituents through their consent to fund the sewer service operations of NRRD. The majority of constituents that have communicated with LAFCO during the service review expressed their desire to maintain organized sewer service in the form currently provided by NRRD.
- There is a strong need for organized reclamation service in the form of levee control within the jurisdictional boundary of NRRD. Constituents currently provide this service, which results in varying levels of flood control and increases the dependency between property owners to make timely and effective improvements to their respective portion of the community-wide levee. The majority of constituents that have communicated with LAFCO during the service review expressed their desire not to raise the level of organized reclamation service beyond the advisory practices that were previously provided by NRRD.
- Attempts by the NRRD Board to establish organized reclamation services in the form of levee control have been rebutted by its constituents. Based on the advice of its counsel, the Board asked LAFCO to consider reorganizing NRRD to remove its reclamation authority to mitigate its potential liability in the event of future flooding within its service area.
- NRRD has never established a revenue stream dedicated for reclamation services, including the operation of the pump station that serves the Edgerly Island Subdivision. Funding for the pump station is drawn from revenue collected as part of NRRD's sewer service operations. Because the pump station is used to help protect against inundation of NRRD's sewer treatment facilities and ponds, it is believed that a district with sewer authority could continue to operate the pump station.

The factors summarized above reflect the need to predicate the analysis of government structure options for NRRD on the inclusion of sewer authority. Additionally, though it is not currently desired by constituents, staff believes that it is also appropriate to base the analysis on the inclusion of reclamation authority in the form of a latent power. A latent power is a service authorized under a principle act that has not been established, but can be activated by a special district upon LAFCO approval. This is distinct from the present organization of NRRD, which has already established reclamation as an active power through its past advisory levee control services as well as its continual operation of a pump station on Edgerly Island. As noted, it is the present status of reclamation as an active power that concerns the NRRD Board with respect to its potential liability in the event of future flooding.

In examining government structure options, staff reviewed the principle acts that authorize various types of special districts. The scope of the review was limited to identifying special districts authorized to provide both sewer and reclamation service in unincorporated territory with independent governing bodies. In all, two types of special districts (other than a reclamation district) were identified using the aforesaid criteria: a county water district and a community service district.<sup>7</sup>

Towards this end, staff has evaluated three government structure options for NRRD. These options are: 1) continue to operate as a reclamation district; 2) reorganize into a county water district with the designation that only sewer service shall be provided at this time; or 3) reorganize into a community service district with the designation that only sewer service shall be provided at this time. Each option includes a description of its authorizing service powers and is evaluated in terms of advantages and disadvantages with regard to improving service and governance provision within the community. A table summarizing staff's analysis is provided below.

<b>Option No. 1: Continue to operate as a reclamation district.</b> (Authorized to provide sewer, reclamation, and water for irrigation. <sup>8</sup> )	
<p><i>Advantages:</i></p> <ul style="list-style-type: none"> <li>• Government structure is already established.</li> <li>• Continues to provide constituents with access to public sewer service in a manner that is consistent with community preferences.</li> <li>• Continues to provide NRRD the ability to operate a pump station used to remove excess flood and storm waters from the Edgerly Island Subdivision and to protect against inundating its sewer treatment facilities.</li> <li>• Continue to provide NRRD the ability to expand the scope of its reclamation operations to include other activities, such as organized levee control.</li> </ul>	<p><i>Disadvantages:</i></p> <ul style="list-style-type: none"> <li>• Continues to foster a disconnect between the reclamation powers of NRRD and the present preferences of its constituents not to establish or fund public reclamation services in a manner that is consistent with its principle act.</li> <li>• Does not address the concern of the NRRD Board regarding its potential liability in the event of future flooding within its service area.</li> <li>• Promotes public confusion with respect to identifying reclamation responsibilities within NRRD's service area.</li> </ul>

<sup>7</sup> This review also identified that a California water district and a public utility district are also authorized to provide both sewer and reclamation services. However, a California water district's reclamation activities must be connected with the operation of water services (Water Code §35401). Likewise, a public utility district's reclamation activities are limited to the drainage of roads, streets and public places – protection of private properties is not provided (Public Utilities Code §16463).

<sup>8</sup> NRRD is authorized to provide sewer service based on a special amendment to the Reclamation District Act.

<b>Option No. 2:</b>	<b>Reorganize into a county water district with the designation that only sewer service shall be provided at this time.</b> (Authorized to provide sewer, drainage and reclamation, and water.)
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*Advantages:*

- Provides constituents with a government structure authorized to provide public sewer services in a manner that is consistent with community preferences.
- Through its sewer authority, allows the district to assume operation of the pump station on Edgerly Island to help protect against inundation of the sewer treatment facilities and ponds.
- Addresses the existing disconnect in the community drawn from the existence of a reclamation district that does not have the support of its constituents to provide public reclamation services in a manner that is consistent with its principle act.
- Addresses the existing concern of the NRRD Board regarding its potential liability in the event of a future flood within its service area by removing reclamation as an active service power.
- Provides flexibility for the district to provide sewer service for which there is existing constituent support to fund, while establishing two latent powers (reclamation and water) that can be activated upon LAFCO approval at a time when sufficient community support is available.
- Reclamation authority, which is needed in the community, would become a latent power available for the district to activate upon LAFCO approval without future reorganization.

*Disadvantages:*

- Creates a disconnect in the community resulting from the establishment of a county water district that does not actively provide water service.
- Transitions constituency within the community from landowner-voter to resident-voter status. It is unknown what effects, if any, this transition would have on community participation with regard to district activities.

**Option No. 3: Reorganize into a community service district with the designation that only sewer service shall be provided at this time.**

(Authorized to provide sewer, flood control, water, garbage, fire protection, police protection, parks and recreation, street lighting, mosquito abatement, library services, street maintenance, bridge and culvert construction, electrical under-grounding, ambulance, public airport maintenance, transportation, and graffiti abatement.)

*Advantages:*

- Provides constituents with a government structure authorized to provide public sewer services in a manner that is consistent with community preferences.
- Through its sewer authority, allows the district to assume operation of the pump station on Edgerly Island to help protect against inundation of the sewer treatment facilities and ponds.
- Addresses the existing disconnect in the community drawn from the existence of a reclamation district that does not have the support of its constituents to provide public reclamation services in a manner that is consistent with its principle act.
- Addresses the existing concern of the NRRD Board regarding its potential liability in the event of a future flood within its service area by removing reclamation as an active service power.
- Provides flexibility for the district to provide sewer service for which there is existing constituent support to fund, while establishing a number of latent powers (ranging from reclamation, water, to street maintenance) that can be activated upon LAFCO approval at a time when sufficient community support is available.
- Reclamation authority, which is needed in the community, would become a latent power available for the district to activate upon LAFCO approval without future reorganization.

*Disadvantages:*

- Establishes a district with a number of latent powers that could be activated by the district board – upon approval by LAFCO – that were not contemplated or planned for at the time of NRRD's formation.
- Transitions constituency within the community from landowner-voter to resident-voter status. It is unknown what effects, if any, this transition would have on community participation with regard to district activities.



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- Empowers the district to form one or more zones within its jurisdiction in order to provide different services, different level of services, or to raise additional revenue within specific areas.

\* All three government structures evaluated as part of this study are similarly empowered with respect to establishing revenue streams. This includes the authority to establish service charges, connection fees, and assessments upon voter approval. All three government structures are also authorized to issue bonds.

## **ADDITIONAL ANALYSIS**

In order to reorganize an existing special district for the purpose of reconstituting its authorizing powers, two concurrent processes are required. First, the existing district must be dissolved to terminate its corporate powers. Second, a new district must be concurrently formed under the provisions of the applicable act and designated by LAFCO as the successor agency to the dissolved district. Significantly, this latter phase requires action from the public in order to complete the reorganization process. A general summary of both processes are provided below.

### Dissolution Proceedings:

There are three methods to initiate a district dissolution. Dissolution can be initiated by the affected district through a resolution of application, by petition that includes a prerequisite number of signatures, or by LAFCO if it is consistent with the conclusions of a study prepared pursuant to Government Codes §56378, §56425, or §56430.<sup>9</sup> Each method includes its own protest and election proceedings. Each method also requires that LAFCO designate a successor agency for the purpose of wrapping of the affairs of the extinguished district or to assume service provision for the affected area. The successor agency is responsible for succeeding to all of the rights, duties, and obligations of the extinguished district.

In approving a dissolution, LAFCO is authorized to establish terms and conditions relating to the acquisition, sale, or transfer of all assets, including real or personal property and cash.<sup>10</sup> LAFCO is also authorized to establish terms and conditions for the employment, transfer, or discharge of all employees. The apportionment of property tax is the responsibility of the Board of Supervisors.<sup>11</sup>

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<sup>9</sup> In the case of NRRD, which is a landowner-voter district, a successful “dissolution” petition would require not less than 10% of the number of landowner-voters in the District who also own not less than 10% of the assessed value of land in the District (Government Code §56870).

<sup>10</sup> Government Code §56886.

<sup>11</sup> Revenue and Taxation Code §99(5).

Formation Proceedings:

Formation proceedings are district-specific and are enumerated under the affected principle act. As part of this analysis, staff has outlined the formation proceedings for the two new governance structure options (Options 2 and 3) identified and analyzed for NRRD. These outlines are provided below.

*Reorganize into a county water district (Option No. 2)*

The formation of a county water district is provided under California Water Code §30200-30325. The formation process is initiated by a petition to LAFCO signed by 10% of the number of voters included in the proposed district that are registered 30 days prior to the petition filing date. Prior to circulating petitions, proponents must file with the LAFCO Executive Officer a notice of intention. The notice must include the name and mailing address of the proponent along with a written statement – not to exceed 500 words – that states the reasons for the proposal. After the formation proceedings have been initiated, LAFCO shall conduct a noticed public hearing at which time the Commission may approve, modify, or deny the proposed formation. If approved, the Commission shall adopt terms and conditions for the formation, and establish a sphere of influence for the new district. The Commission serves as conducting authority for the formation. The principle act specifies that the Commission call for an election to be held in the proposed district at the time of the hearing approving formation. If at the election date a majority of the registered voters cast their vote in favor, the district shall be formed.

*Reorganize into a community service district (Option No. 3)*

The formation of a community service district is provided under California Government Code §61010-61014. The formation process is initiated by a petition to LAFCO signed by 25% of the number of voters registered within the boundaries of the proposed district, or by a resolution of application by the County.<sup>12</sup> The principle act specifies that the petition conform to the procedure requirements of Government Code §56700 et. seq.. As part of this process, the petition shall specify which services it is proposed that the district be authorized to provide upon formation, the methods by which the district will be financed, and the methods for selecting board members. Prior to circulating any petitions, the proponents must publish a notice of intention. The notice shall include a written statement – not to exceed 500 words – stating the reasons for forming the district, the proposed services that the district will provide, and the proposed methods by which the district will be financed.<sup>13</sup> After the formation proceedings have been initiated, LAFCO shall proceed with the processing requirements enumerated under Government Code §56650-5668. If approved at a noticed public hearing, the

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<sup>12</sup> Pursuant to California Government Code §61013(b), prior to adopting a resolution of application, the County shall hold a public hearing on the resolution. Notice of the hearing shall be published pursuant to Government Code §6061 in one or more newspapers of general circulation within the county. At least 20 days before the hearing, the County shall give mailed notice of its hearing to the LAF CO Executive Officer.

<sup>13</sup> Pursuant to California Government Code §61012(a)(c), the notice shall be published in one or more newspapers of general circulation within the territory that is proposed to be included in the district. Within five days of publication, proponents must file with the LAFCO Executive Officer a copy of the notice and an affidavit from the newspaper certifying publication.

Commission shall adopt terms and conditions for the formation and establish a sphere of influence for the new district. The Commission serves as conducting authority for the formation. A protest hearing is noticed and conducted during which registered voters within the proposed district can submit their written protest to formation. If a majority protest exist (50% or more), the Commission shall abandon the proceedings. If no majority protest exists, the principle act specifies that the Commission order an election within the proposed district. If at the election date a majority of the registered voters cast their vote in favor, the district shall be formed.

## CONCLUSION

This analysis of available government structure options for NRRD indicates that reorganization into a community service district is the preferred option with respect to meeting the present and future needs of the District and its constituents. (This is the last of three options examined by staff in the preceding sections). This option would enable the community to continue to receive public sewer provision in a manner that is consistent with its preferences while establishing reclamation as a latent power, which could be activated by the district – upon LAFCO approval – at a future date when sufficient community support is available. This reorganization option would also address two key issues identified in the service review. First, it would address the existing disconnect within the community drawn from the existence of a reclamation district that does have the support of its constituents to provide public reclamation services in a manner that is consistent with its principle act. Second, it would address the existing concern of the NRRD Board regarding its potential liability in the event of a future flood in its service area by removing reclamation as an active service power.

In terms of disadvantages, reorganizing NRRD into a community service district would establish a district with a number of latent powers ranging from water to street maintenance. If powers other than reclamation were activated, it would result in a level of service provision not contemplated or planned for the community at the time of NRRD's formation. However, because it must approve the activation of all latent powers, LAFCO retains the ability to promote organized development and service provision within the community in manner that is consistent with its adopted policies. This provision provides the district flexibility to seek future activation of additional services in the event they are needed within the community while providing for a LAFCO review and approval process.